

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF FEBRUARY 17-18, 2022

Prepared on January 31, 2022

ITEM NUMBER: 15

SUBJECT: Proposed Amendments to the Water Quality Control Plan for the Central Coastal Basin to Improve and Clarify Waste Discharge Prohibition Language

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ACTION: Adopt Proposed Resolution No. R3-2022-0001

SUMMARY

The Water Quality Control Plan for the Central Coastal Basin (Basin Plan)¹ establishes beneficial uses to be protected, establishes water quality objectives for both surface water and groundwater, and includes programs of implementation needed for achieving water quality objectives. Any change to the Basin Plan requires a Basin Plan amendment. This staff report summarizes proposed changes to the Basin Plan's waste discharge prohibition language by establishing additional prohibitions on specific types of discharges in all waters of the State within the Central Coast Region and revises the existing land disturbance prohibition to better protect beneficial uses. The proposed changes to the Basin Plan are presented to the Central Coast Regional Water Quality Control Board (Central Coast Water Board) for consideration as Proposed Resolution No. R3-2022-0001 (Attachment 1). The proposed changes to the Basin Plan are a combination of substantive and non-substantive (i.e., editorial) amendments.

DISCUSSION

Background

The Central Coast Water Board first adopted the Basin Plan in 1975. California Water Code section 13243 provides that a regional board, in a water quality control plan, may specify certain conditions or areas where the discharge of waste, or certain types of

¹ See the Basin Plan at the following link:

https://www.waterboards.ca.gov/centralcoast/publications_forms/publications/basin_plan/docs/2019_basin_plan_r3_complete_webaccess.pdf

waste, is not permitted. Any change to the Basin Plan requires a Basin Plan amendment. All Basin Plan amendments must undergo public notice, an opportunity for the public to comment, and a hearing prior to adoption. After the Central Coast Water Board adopts a Basin Plan amendment, the Basin Plan amendment must next be approved by the State Water Resources Control Board (State Water Board), then the Office of Administrative Law (OAL) and, in many cases, the United States Environmental Protection Agency (USEPA). The Basin Plan forms the basis for regulatory actions taken by the Central Coast Water Board to protect waters of the State and to ensure compliance with applicable portions of the California Water Code and the federal Clean Water Act.

In addition to establishing beneficial uses for waters of the State and the water quality objectives that must be maintained to support those beneficial uses, the Basin Plan describes the programs, projects, prohibitions, and other actions that are necessary to achieve water quality objectives. The Basin Plan also summarizes State Water Board and Central Coast Water Board plans and policies to protect water quality and describes statewide and regional surveillance and monitoring assessment programs.

A detailed discussion of each proposed amendment is provided in the Project Report (Attachment 2) and includes the rationale and justification for each proposed amendment based on facts, studies, or expert opinion. A brief summary of the proposed amendments is provided in this staff report.

Summary of Proposed Amendments

Amendments to establish additional prohibitions on specific unauthorized discharges in all waters of the State. Three additional prohibitions for specific unauthorized discharges² to all waters of the State within the Central Coast Region are proposed for section 5.4.1 of the Basin Plan. The new prohibitions on specific types of unauthorized discharges include sediment, well development water, and construction dewatering water to waters of the State in a manner causing or threatening to cause a condition of pollution, contamination, or nuisance. These specific types of unauthorized discharges have been observed in the Central Coast Region, and a prohibition on such discharges is needed to better protect beneficial uses in the Central Coast Region.

Amendments to clarify prohibitions on specific unauthorized discharges in inland surface waters of the State. Amendments to section 5.4.2 clarify that the prohibitions therein apply to unauthorized discharges to “inland surface waters of the State” (revising language that simply stated “surface waters” or “inland waters”).

Amendments to the existing land disturbance prohibition. Several revisions are proposed to the existing land disturbance prohibition language in section 4.8.5.1 to

² A discharger complying with a Regional Water Quality Control Board, or State Water Board order regulating the discharge or a discharge that is exempt from obtaining waste discharge requirements pursuant to the California Water Code or the Basin Plan is not subject to the prohibition.

improve and clarify the language. Specific amendments to section 4.8.5.1 include the following:

- Clarify that this prohibition applies to unauthorized discharges (by adding the words “unless authorized, or exempt by the California Water Code or the Basin Plan”).
- Clarify that this prohibition applies to waters of the State (replacing the language “any stream in the basin” with “waters of the State”) which includes streams, rivers, estuaries, lakes, and wetlands³.
- Remove mention of specific land disturbance activity examples (e.g., timber harvesting and construction) to clarify that this prohibition applies to all soil disturbance activities.
- Remove language related to best management practices, which are implemented through orders and management agency agreements and therefore are not subject to the prohibition.
- Remove exemptions from regulation for certain agriculture soil disturbance activities. As documented in Agricultural Order 4.0⁴, agricultural activities have been identified to cause severe erosion and cause or threaten to cause a condition of pollution or nuisance.

Amendment to add a list of Basin Plan sections containing discharge prohibitions (editorial). This amendment to section 4.5.1.5 of the Basin Plan will add a list of the sections of the Basin Plan that contain discharge prohibitions.

Amendment to add a map of the Monterey Bay prohibition zone (editorial). This amendment will add a new graphic map to illustrate the extent of the existing Monterey Bay prohibition zone, an area where waste discharges are prohibited. The new map will be added to section 5.4.3 of the Basin Plan.

Amendment to consolidate existing domestic animal waste prohibitions (editorial). This amendment will consolidate the existing domestic animal waste prohibitions (currently in sections 4.8.5.6, 5.4.2.1, and 5.4.5) into section 5.4.2.1 of the Basin Plan.

Amendment to correct typos (editorial). This amendment will correct typos in section 4.5.1.6 (Enforcement Actions).

Environmental Documentation Summary

The California Natural Resources Agency has certified the basin planning process as an exempt regulatory program (Public Resources Code section 21080.5), and therefore an environmental impact report or negative declaration is not required for this project.

³ Certain wetlands are waters of the State, as set forth in the State Water Board’s [State Wetland Definition and Procedures for Discharges of Dredge or Fill Materials to Waters of the State](#). The *Procedures* set a framework for determining whether a feature that meets the wetland definition is a water of the State. This proposed amendment applies to waters of the State.

⁴ See Agricultural Order Findings 119-123, reproduced in their entirety in Appendix 1 (section 6.1) of Attachment 2 to this staff report.

Rather, exempt regulatory programs must prepare Substitute Environmental Documentation (SED) consisting of this staff report and the Project Report (Attachment 2), which includes the California Environmental Quality Act (CEQA) Environmental Checklist form.

There are no potentially significant environmental impacts from the implementation of these Basin Plan amendments. Therefore, an analysis of alternatives is not needed to lessen or mitigate impacts. The finding of no environmental impacts is because these Basin Plan amendments will not result in any physical change, nor will they affect any other plan, regulation, or policy. In this case, the proposed Basin Plan amendments do not require the installation of pollution control equipment, or compliance with a performance standard or treatment requirement. No implementation plan is proposed because no actions are required to comply with the proposed Basin Plan amendments. Thus, these amendments would have no environmental or economic impacts.

Human Right to Water

California Water Code section 106.3, subdivision (a) states: It is a policy of the State of California “that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” On January 26, 2017, the Central Coast Water Board adopted Resolution No. R3-2017-0004, which affirms the realization of the human right to water and the protection of human health as the Central Coast Water Board's top priorities.

The proposed amendments are consistent with Resolution No. R3-2017-0004 and include prohibitions on additional specific types of waste discharges that impact beneficial uses. These proposed amendments are expected to better protect the municipal and domestic supply (MUN) drinking water beneficial use and improve drinking water quality for those that depend on surface water or groundwater as their drinking water source.

Environmental Justice

Environmental Justice principles call for the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income in the development, adoption, implementation, and enforcement of all environmental laws, regulations, and policies that affect every community's natural resources and the places people live, work, play, and learn. The Central Coast Water Board implements regulatory activities and water quality projects in a manner that ensures the fair treatment of all people, including Underrepresented Communities. Underrepresented Communities include but are not limited to Disadvantaged Communities (DACs), Severely Disadvantaged Communities (SDACs), Economically Distressed Areas (EDAs), Tribes, Environmentally Disadvantaged Communities (EnvDACs), and members of Fringe Communities.⁵

⁵ Disadvantaged Community: a community with an annual median household income that is less than 80% of the statewide annual median household income (Public Resources Code section 80002(e)); Severely Disadvantaged Community: a community with a median household income of less than 60% of

Furthermore, the Central Coast Water Board is committed to providing all stakeholders the opportunity to participate in the public process and provide meaningful input to decisions that affect their communities.

The proposed Basin Plan amendments will be applicable to the entire Central Coast Region and all underrepresented communities therein. The proposed amendments will serve to prevent unpermitted discharges that degrade water quality. Public outreach for this project included project updates and release of public notices via electronic mail (email) to the Basin Planning & Triennial Review interested parties list, which contains third party programs for underrepresented communities. Staff conducted targeted outreach to tribes in the Central Coast Region as described in more detail below in the Comments section. In addition, public comment opportunities were noticed in all major newspapers throughout the Central Coast Region.

Climate Change

The Central Coast faces the threat and the effects of climate change for the foreseeable and distant future. To proactively prepare and respond, the Central Coast Water Board has launched the Central Coast Water Board's Climate Action Initiative, which identifies how the Central Coast Water Board's work relates to climate change and prioritizes actions that improve water supply resiliency through water conservation and wastewater reuse and recycling; mitigate for and adapt to sea level rise and increased flooding; improve energy efficiency; and reduce greenhouse gas production. The Climate Action Initiative is consistent with the Governor's Executive Order B-30-15 and the State Water Board's Climate Change Resolution No. 2017-0012.

The proposed Basin Plan amendments will not have direct climate change impact benefits. However, these amendments may help the Central Coast Water Board's ability to better prevent unauthorized discharges associated with the increased frequency of extreme weather events or other climate change impacts.

the statewide average. (Public Resources Code section 80002(n)); Economically Distressed Area: a municipality with a population of 20,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 20,000 persons or less with an annual median household income that is less than 85% of the statewide median household income and with one or more of the following conditions as determined by the department: (1) financial hardship, (2) unemployment rate at least 2% higher than the statewide average, or (3) low population density. (Water Code section 79702(k)); Tribes: federally recognized Indian Tribes and California State Indian Tribes listed on the Native American Heritage Commission's California Tribal Consultation List; EnvDACs: CalEPA designates the top 25 percent scoring census tracts as DACs. Census tracts that score the highest five percent of pollution burden scores but do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data are also designated as DACs (refer to the CalEnviroScreen 3.0 Mapping Tool or Results Excel Sheet); Fringe Community: communities that do not meet the established DAC, SDAC, and EDA definitions but can show that they score in the top 25 percent of either the Pollution Burden or Population Characteristics score using the CalEnviroScreen 3.0.

OUTREACH AND RESPONSE TO COMMENTS

Staff conducted stakeholder outreach throughout the Basin Plan amendment process.

Tribal Outreach: This project included two tribal outreach efforts. In July 2018, a certified letter regarding tribal cultural resources consultation was sent to tribes, pursuant to Public Resources Code section 21080.3.1 and California Assembly Bill 52. However, no tribal consultations were requested for this project. In July 2021, a second certified letter regarding tribal cultural resources consultation was sent to tribes as described above and, in addition, informal emails were sent to all tribes in the region notifying them of the opportunity to receive more information regarding this Basin Plan amendment process. Again, no tribal consultations were requested for this project.

CEQA Scoping Meeting: Staff released a notice of CEQA stakeholder scoping meeting and availability of scoping document on October 17, 2018 (Attachment 3). Staff conducted a CEQA stakeholder scoping meeting on November 15, 2018, which was attended by six individuals representing city, county, and agricultural interests.

Opportunities for Public Comment: Two public comment periods were provided. The first comment period was from January 16, 2020 to March 16, 2020. No public comment letters were received during the comment period, and an earlier version of the proposed Basin Plan amendments was included on the agenda for the July 16-17, 2020 Board Meeting. However, on July 9, 2020, staff received a late comment letter. Staff reviewed the comment letter and subsequently pulled the proposed Basin Plan amendments item from the July 2020 Board Meeting agenda to consider the comment letter further. Staff made several revisions to the Project Report and proposed Basin Plan amendments to address the comment letter. The revised Project Report and proposed Basin Plan amendments were released for another 45-day public comment period from September 24, 2021 to November 15, 2021. No public comments were received during the 2021 public comment period, however, staff met with stakeholders that submitted the previous late comment letter during the public comment period to discuss the revised proposed amendments.

For each public comment period, a notice of opportunity for public comment was sent to interested persons subscribed to the Basin Planning & Triennial Review interested persons email list as well as published for three days in six newspapers with general circulation throughout the Central Coast Region. Each notice included internet web links directing interested persons to the draft Project Report, draft Resolution, and proposed amendments to the Basin Plan (see Attachments 4 and 5).

CONCLUSION

The proposed Basin Plan amendments to improve and clarify the prohibition sections of the Basin Plan will improve the effectiveness of water quality protection. In addition, the proposed amendments are necessary and will fulfill three high priority proposals from the 2017 Triennial Review of the Basin Plan. Staff recommends adoption of proposed Resolution No. R3-2022-0001.

RECOMMENDATION

Adopt proposed Resolution No. R3-2022-0001. The proposed Resolution also contains an attachment showing a strikeout and underline version of the portions of the Basin Plan where the proposed amendments will be incorporated.

ATTACHMENTS

1. Proposed Resolution No. R3-2022-0001, including Attachment A (a strikeout and underline version of the Basin Plan showing all proposed amendments).
2. Project Report including the CEQA Checklist.
3. Notice of CEQA Scoping Meeting – October 17, 2018.
4. Notice of Public Hearing and Opportunity to Comment – January 16, 2020.
5. Notice of Public Hearing and Opportunity to Comment – September 24, 2021.